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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,713	02/18/2000	Noriaki Mizutani	49584(904)	7799

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EXAMINER

MANOHARAN, VIRGINIA

ART UNIT

PAPER NUMBER

1764

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/506,713

Applicant(s)

MIZUTANI ET AL.

Examiner

Virginia Manoharan

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on May 22, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9, 10, 12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 and 14 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 9, 10 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claimed "spacing have a blind ratio of not less than 0.2 and not more than 17" is not positively recited in the specification.

Claims 9-10 provides for distilling in a perforated tray tower without down comer, but, since the claim does not set forth any additional steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites the structure without any further method steps from distilling is recited.

Claims 1-2 and 4-7 are rejected under 35 U.S.C. 101 because the claimed recitation more of structures, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Dap. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

- a. Claim 4 does not differ substantially from claim 1 with respect to the structural elements involved. The differences seen are in the preambles and in the "wherein" clauses in the claims. However, these differences are deemed not patentably distinguishable because a preamble may or may not even be given patentable weight, and the "two or more" in the "wherein" clause of claim 4 falls within the "multiple perforated trays in the "wherein" clause of claim 1.

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b. In claim 6, it is unclear what constitute the "higher" within the context of the claimed invention.

Claims 1-2, 4-7, 9-10 and 12 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

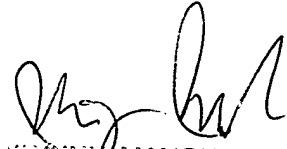
Claims 3 and 14 are allowed.

Any inquiry concerning this communication from the examiner should be directed to V. Manoharan whose telephone number is (703) 308-3844. The examiner can generally be reached on Tuesday--Friday from 7:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (703) 308-6824. The fax phone numbers for the organization where this application is assigned are (703) 872-9311 for regular communications and (703) 308-0651 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

V. Manoharan/dh  
September 2, 2003

  
V. MANOHARAN  
PRIMARY EXAMINER  
ART UNIT 125/1764  
9/2/03